June 8, 1999

Mr. William E. Kennard
Chairman
Federal Communications Commission
445 12th St., S.W.
Room 8- B201
Washington, DC 20554

RE: *Ex Parte* Presentation Restricted Proceeding
In re Access Charge Reform (CC Docket 96-262)

Dear Chairman Kennard:

The Office of Advocacy, U.S. Small Business Administration, ("Advocacy") files these *ex parte* comments to the Commission in the above captioned proceeding. Advocacy is greatly concerned that the Federal Communications Commission ("FCC" or "Commission") intends to change the interstate access charge rules in such a way as to postpone some or all scheduled caps on the presubscribed interexchange carrier charge ("PICC"). This would place a disproportionate burden on small multi-line businesses.

Pursuant to its statutory duty to consult with federal agencies as part of the regulatory flexibility analysis required by the Regulatory Flexibility Act,[1] Advocacy has overlapping jurisdiction with the Commission. The Commission's rules provide an inter-governmental privilege to agencies and branches of the Federal Government when the matter concerns an issue where the FCC shares jurisdiction.[2] This privilege exempts the agency or branch from the prohibitions of restricted proceedings and permit-but-disclose proceedings, and the prohibitions during Sunshine agenda period.

The Office of Advocacy was established by Congress in 1976 by Pub. L. No. 94-305[3] to represent the views and interests of small business within the federal government. Its statutory duties include serving as a focal point for concerns regarding the government's policies as they affect small business, and developing proposals for changes in federal agencies' policies and communicating these proposals to the agencies.[4] The Office of Advocacy also has statutory authority to monitor and report on the FCC's compliance with the Regulatory Flexibility Act ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").[5]

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[1] 5 U.S.C. § 601 et. seq.
[2] 47 CFR § 1.1204(5).
[3] Codified as amended at 15 U.S.C. §§ 634 a-g, 637.
[4] 15 U.S.C. § 634c(1)-(4).
[5] 5 U.S.C. § 612.

It is Advocacy's understanding that the FCC intends to take action at its June 10 meeting to benefit low volume residential users by freezing the scheduled adjustments to the PICC and by raising PICC cap for multi-line businesses from $2.75 to $4.31 per line. Before the Commission takes this step, it is imperative that it consider the impact on small business end users, as Advocacy requested in previous comments in this docket.[6] Advocacy believes that these actions will place a disproportionate burden on small business end users who are often low-volume users themselves.

The vast majority of businesses in the country – 94.9 percent of 4, 677,075 firms – are small businesses with annual gross revenues under $5.0 million dollars.[7] These firms only garner 17.1 percent of total business receipts.[8] Although exact numbers on the number of small businesses located in rural, insular, high cost areas are not available, we are confident that mostly all the businesses in such areas are small, numbering in the tens of thousands. Small business end users are a "substantial number of small entities" within the meaning of the RFA.[9]

Any freeze to the scheduled reduction in PICC charges will have a direct significant economic impact on a substantial number of small business end users. As the Commission has acknowledged,[10] the average small business has four telephone lines. Other studies have placed that number even higher.[11] Since small businesses are assessed a PICC for each of these lines, the impact of freezing the PICC and raising the cap is magnified at least four-fold over a single-line user on a monthly basis.

In its May 7 Access Charge Order, the Commission stated that the PICC would be a transitory fee that would lessen with each year.[12] Specifically, the Commission said that the PICC would lessen each year starting in 1998 until the PICC was less than $1 per line in 2001.[13] The Commission has yet to reduce the PICC charge even once as stated in the Access Charge Order. Moreover, in its order freezing the reduction of the PICC, the Commission incorrectly certified that the freeze would have no significant impact on small businesses.[14]

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[6] *Ex parte* Comments and Petition for Reconsideration for Access Charge Reform, et al. of the Office of Advocacy in CC Docket. No. 96-262 (Nov. 21 1997); Reply Comments of the Office of Advocacy in CC Dkt. No. 96-262 (Feb. 17, 1998); Comments of the Office of Advocacy in CC Dkt. No. 96-262 (Oct. 26, 1998).
[7] *Ex parte* Comments of the Office of Advocacy In re Universal Service (CC Dkt. No. 96-45), Apr. 4, 1997, at 11 (citing U.S. Census Bureau Data).
[8] *Id*.
[9] 5 U.S.C. § 601 et. seq.
[10] FCC Press Release, Commission Reforms Interstate Access Charge System, CC Dkt. No. 96-262, Rpt. No. 97-23 (The Average Small Business is A Winner chart citing results from PNR Associates study).
[11] *Ex parte* Comments of the Office of Advocacy in CC Dkt. No. 96-45 at 4 (Apr. 4, 1997) (citing CSBA 1997 Telephone Use Poll); National Federation of Independent Business Foundation, *Who Will Connect Small Businesses To The Information Superhighway*, 7 (December 1994).
[12] *In re* Access Charge Reform, *First Report and Order*, CC Dkt. 96-262, FCC 97-158, at ¶ 59 (rel. May 16, 1997)("Access Charge Order").
[13] *Id*.
[14] *In re* Access Charge Reform, *Third Report on Reconsideration*, CC Dkt. 96-262, FCC 98-257, at ¶ 59 (rel. Oct. 5, 1998)("PICC Freeze Order").

The Commission assured businesses in the Access Charge Order that the PICC would be transitory and quickly reduced. Any variation from that schedule will substantially impact small business end users, and the RFA requires that the Commission consider not only the regulatory burden placed on small businesses but also less burdensome alternatives. As Advocacy has previously stated, any delay in the reduction to the PICC on small businesses will have a significant impact on a substantial number of small entities.[15] Advocacy disapproved of the certification in the PICC Freeze Order and believes that continued delay in reduction of the PICC will compound the impact on small businesses end users. An increase in the PICC cap for multi-line businesses would exasperate the burden even further.

Advocacy has stated on the record to the Commission that PICC charges are flowed through the interexchange carriers ("IXCs") to the end user.[16] According to the information before Advocacy, the Commission is proposing a PICC cap raise from $2.75 to $4.31, which would increase the average business multi-line PICC from a national average of $2.35 to $3.45. Using the FCC's conservative estimate that the average business in the nation has four lines, this increase in the PICC cap would raise the bill of the average business to $4.40 a month with no additional services or calls. This represents a total cumulative increase to small business of approximately $19.5 million per month.

Many of these small business are low volume users. Small businesses with a local client base or in certain industries will not save money through lower long distance rates. The local pizza delivery shop which has many incoming lines and rarely makes long distance calls is a perfect example of this type of small business. Increased small businesses reliance on toll-free numbers and the Internet have reduced long distance use. If the Commission is considering relief to low volume residential users, it should also consider relief to low volume business users. At the very least, the Commission should not further burden small businesses with the costs of a subsidy from which they will receive no benefit. The Commission concern for the residential customer needs to be tempered with the realization of the impact on small business, and the need for an approach to phase in the non-traffic sensitive costs recovery so as not to unduly disrupt the small business economy.

Sincerely,

Jere W. Glover
Chief Counsel for Advocacy

Eric E. Menge
Assistant Chief Counsel
For Telecommunications

[15] Comments of the Office of Advocacy in CC Dkt. No. 96-262 (Oct. 26, 1998).
[16] *Id.*